

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 45 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

RANCHHODBHAI ATMARAM

Appearance:

MR MIHIR H. JOSHI, instructed by
MR MANISH R BHATT for Petitioner
SERVED BY RPAD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 20/02/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following three questions for the opinion of this Court under Section 256(1) of the Income Tax Act.

1. "Whether on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in finding that the assessee could not be assessed as unregistered firm because the partners were assessed before the firm was

assessed?"

2. "Whether on the facts and in the circumstances of the case, the finding of the appellate Tribunal that Smt. Laxmiben Atmaram was not the benemidar of her brother or that she was a partner in the assessee firm in her own right, is correct in law?"

3. "Whether on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that Shri Nanchodbhai and that in any event it was not proved that she was a benamidar of Shri Ranchodbhai, is correct in law?"

The assessee is a firm and the matter pertains to Assessment Year 75-76. In respect of the Assessment Year 1974-75, references were earlier made in the case of the assessee being I.T.R No. 109/82 and 110/82 and the questions which are now referred to were the subject matter of those references also, which came to be disposed of on 9.2.94. In those references, it was held that the assessee could not be assessed as unregistered firm because the Partners were assessed as partners before the firm was assessed and question No.1 which was identical to the present question No.1 was answered in the affirmative in favour of the assessee while other questions were not answered in view of the opinion on question No.1. The Tribunal had also not decided the question of genuineness of the partnership firm in view of its finding on the first issue which was the subject matter of question No.1. However, we are not in a position to straightway follow that opinion in view of the direct decision of the Supreme Court on the point in ITO Vs. CH. Atchiaiah, reported in 218 ITR 239. It has been observed therein that Section 183 (which has since been omitted with effect from April 1, 1993, by the Finance Act, 1992) provided that in the case of an unregistered firm, it is open to the Income-tax Officer to treat it, and make an assessment on it, as if it were a registered firm, if such a course was more beneficial to the Revenue in the sense that such a course would fetch more tax to the public exchequer. The attention of the concerned authority was not directed to this aspect and the matter has been earlier opined on the abstract principle without reference to the provisions of Section 183 of the Act. Since there is no material on the basis of which it can be ascertained which course was more beneficial to the Revenue, it is not possible for us to

opine on the question No.1 and we therefore, do not answer it. Furthermore, as regards the questions Nos. 2 and 3, the Tribunal has, as noted, not gone into that question, which it may become necessary now in view of the decision of the Supreme Court in the case of CH. Atchaiah (supra), which has a bearing on that question. As the question Nos. 2 and 3 do not arise from the Tribunal's order, we do not decide the same. The reference stands disposed of accordingly with no order as to costs.
